

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Metabolic Nutrition, Inc.,

Petitioner,

BioSan Laboratories, Inc.,

Registrant

In the matter of Registration No. **2,662,341**

For the mark **BIO-METABOLIC NUTRITION**

Date registered: **December 17, 2002**

Cancellation No. **92-041643**



**Box TTAB No Fee
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513**

04-04-2003

U.S. Patent & TMOfo/TM Mail Rcpt Dt. #34

**BIOSAN LABORATORIES, INC.'S ANSWER TO
METABOLIC NUTRITION, INC.'S PETITION TO CANCEL**

In response to the Notice of Petition to Cancel issued by the Board on February 25, 2003
BioSan Laboratories, Inc. ("Registrant") hereby responds to Metabolic Nutrition, Inc.'s
("Petitioner") Petition to Cancel as follows:

1. In answering paragraph 1 of the Petition to Cancel, Registrant admits that BioSan Laboratories, Inc. is a Delaware corporation with a principal place of business at Organic Park, P.O. Box 325, Derry, NH 03038, that it is the owner of Certificate of Registration No. 2,662,341, and that Metabolic Nutrition, Inc. has petitioned to cancel said Certificate of Registration. In further answering, Registrant states that is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 1 of the Petition to Cancel and, therefore, denies the same.

2. In answering paragraph 2 of the Petition to Cancel, Registrant states that Metabolic Nutrition, Inc. has petitioned to cancel Certificate of Registration No. 2,662,341, otherwise denied.

3. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Petition to Cancel and, therefore, denies the same.

4. Registrant admits the allegations set forth in of paragraph 4 of the Petition to Cancel.

5. In answering paragraph 5 of the Petition to Cancel, Registrant states that the U.S. Trademark Application it filed on August 20, 2001 for the mark BIO-METABOLIC NUTRITION, Serial No. 76-304645, speaks for itself. In further answering, Registrant states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 5 of the Petition to cancel and, therefore, denies the same.

6. In answering paragraph 6 of the Petition to Cancel, Registrant states that Registrant's mark is used in connection with vitamin, mineral and nutritional supplements produced in tablet, capsule and powder form. In further answering, Registrant states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegation set forth in paragraph 6 of the Petition to Cancel and, therefore, denies the same.

7. Registrant denies the allegations set forth in Paragraph 7 of the Petition to Cancel.

8. Registrant denies the allegations set forth in paragraph 8 of the Petition to Cancel.

9. Registrant denies the allegations set forth in paragraph 9 of the Petition to Cancel.

10. Registrant denies the allegations set forth in paragraph 10 of the Petition to Cancel.

AFFIRMATIVE DEFENSES

In further answer to the Petition to Cancel, Registrant asserts that:

FIRST AFFIRMATIVE DEFENSE

The Petition to Cancel fails to state, in whole or in part, a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the Petition to Cancel.

SECOND AFFIRMATIVE DEFENSE

Registrant's mark is not the same as or confusingly similar to Petitioner's alleged mark.

THIRD AFFIRMATIVE DEFENSE

Registrant's use of its mark will not mistakenly be thought by the public to derive from the same source as Petitioner's goods or services.

FOURTH AFFIRMATIVE DEFENSE

Registrant's mark in its entirety is sufficiently distinctive and different from Petitioner's alleged mark to avoid confusion, deception or mistake as to the source or sponsorship or association of Registrant's goods or services.

FIFTH AFFIRMATIVE DEFENSE

Registrant's mark, when used on Registrant's goods, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Registrant with Petitioner.

SIXTH AFFIRMATIVE DEFENSE

Petitioner's claims are barred by virtue of the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

Petitioner's claims are barred by the doctrine of estoppel.

EIGHT AFFIRMATIVE DEFENSE

Petitioner's claims are barred by the doctrine of waiver.

NINTH AFFIRMATIVE DEFENSE

Petitioner has no valid trademark rights.

RELIEF REQUESTED

WHEREFORE, Registrant BioSan Laboratories, Inc. respectfully requests that this cancellation proceeding be dismissed, with prejudice.

Respectfully Submitted,
Registrant,
BioSan Laboratories, Inc.
By its attorneys,



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Dated: April 4, 2003

CERTIFICATE OF SERVICE

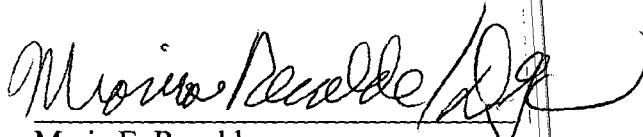
I, Maria E. Recalde, hereby certify that the foregoing BIOSAN LABORATORIES INC.'S ANSWER TO METABOLIC NUTRITION, INC.'S PETITION TO CANCEL was served on Anton J. Hopen, Smith & Hopen, P.A., Suite 220, 15950 Bay Vista Drive, Clearwater, FL 33760, by mailing a copy of same, first class, postage prepaid, this 4th day of April, 2003.


Maria E. Recalde

CERTIFICATE OF EXPRESS MAIL

I, Maria E. Recalde, hereby certify that the original of the foregoing BIOSAN LABORATORIES, INC.'S ANSWER TO METABOLIC NUTRITION, INC.'S PETITION TO CANCEL is being deposited with the United States Postal Service as Express Mail Post Office to Addressee, addressed to Box TTAB No Fee, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on April 4, 2003.

ET 684051592 US
Express Mail Label Number


Maria E. Recalde

Dated: April 4, 2003

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April 4, 2003

VIA EXPRESS MAIL

Box TTAB No Fee
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2900 Crystal Drive
Arlington, VA 22202-3513

RE: Metabolic Nutrition, Inc. v. BioSan Laboratories, Inc.
In the matter of Registration No. 2,662,341
For the mark: BIO-METABOLIC NUTRITION
Date Registered: December 17, 2002
Cancellation No. 92-041643

Dear Sir/Madam:

Enclosed for filing in connection with the above-referenced matter please find the following:

1. BioSan Laboratories, Inc.'s Answer to Metabolic Nutrition, Inc.'s Petition to Cancel; and
2. Notice of Service.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Maria E. Recalde

MER/alk
Enclosures

TTAB

04-04-2003

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